

Declaration of Denise L. Smith

1. My name is Denise L. Smith, and I am over the age of nineteen (19) years. I am African-American. I am a female. I have personal knowledge of the facts set forth below pertaining to the case pending in the United States District Court for the Middle District of Alabama, Eastern Division, styled Denise L. Smith v. Sears, Roebuck and Co., CV-05-1018-MHT. I give this Declaration voluntarily, without coercion and under penalty of perjury.
2. I was employed with Sears, Roebuck & Co., in Auburn, Alabama beginning April 20, 1989 till November 13, 2004 as a Sales Associate. When I became employed with Sears, Roebuck & Co., I worked in the vacuum, and cooking appliance department. While working in that department, I became trained in selling vacuum cleaners, ranges, dishwashers, microwaves, micro hoods, vent hoods, and sewing machines. After the appliance department was combined with the refrigeration and washer & Dryer department; vacuum cleaners and sewing was moved to the Electronics department; I moved to Electronics to sell vacuum cleaners and sewing and back up the Electronic department. My main expertise was in the vacuum cleaners and appliance department. I was trained thoroughly thru training classes that were hosted by the district and the monthly training current magazine. I was a very knowledgeable, thoroughly qualified and a dedicated Sales Associate.
3. I was subjected to adverse job action by being terminated for illegal use of coupons when other white associates were using the same coupons. No one was given oral or written warning to stop using the coupons; only Beatrice Willis (an African-American Female) and myself (also an African - American) was terminated. I personally know that not only in the appliance department but throughout the whole Auburn Sears store coupons were being reused. I personally know that management knew that associates were reusing coupon.
4. I challenge Byron Mason's statement #10 & 11; Terry Gandy's statement #9; John Lawrie's statement #7 and Kenny Reese statement #5. They never held a meeting where coupons were discussed. If it would have been they would be able to provide an "I Know It Coupon", which they can't because it doesn't exist. The "I Know It Coupon" is what associates sign for verification that management had made the associate aware of specific information. I have never signed an "I Know It Coupon" with regards to coupons because there was never a meeting whether it was store wide, by department or individually.
5. I personally know that Kenny Reese, Terry Gandy, John Lawie, Byron Mason, Jackie Dodson, Carolyn Landers, Stephanie Darby and Clint Till have lied and perjured themselves about the use of coupons. I was never trained nor told by any member of management to destroy coupons or turn them in at night. I personally know that coupons were not destroyed or turned in at night. Coupons were being reused on a regular basis by all associates.

6. I personally know that Clint Till who is a white male was an employee of Sears at the time before and after October 2004 and November 2004. Clint Till (who is white and not terminated) purchased a hot water heater using his associate discount and the \$65.00 service coupon. The purchase was rung under Denise Smith (who is a African American female and was terminated) associate number (190), which I (being Denise Smith) do not recall the sale nor ringing the transaction.
7. I have personal knowledge that Clint Till came to work intoxicated on many occasions which was greater than ten times. He was drunk so much he was given the nickname Couroisier and too which he answered. Clint Till has also had two DUI while employed with Sears. Clint Till missed a day of work while employed with Sears because he was in jail charged with DUI and no adverse action was taken against him.
8. I personally know that other associates and/or management rang sales in other associates number on a routine basis. This is an example of where rules that are listed in the employee handbook and was corporate policy was not followed by Auburn Store local policy. The policy is listed on page 8 under the subhead Code of Conduct, Business Conduct. Another example of sales that were rung under my number was during my vacation (July 2, 2004 - July 10, 2004) to Chattanooga, Tennessee a sale in which a customer purchased a house full of appliances that was rung under my number by Carolyn Landers. I could not have rung the sale if I was not in the store nor the state of Alabama. The same customer purchased lawn equipment from James Benson at the same time. All the merchandise the customer purchased was significantly lowered in price by Kenny Reese. Carolyn Landers rung another sale in my number while I was not at the store, nor on the schedule. The customers name was Terry & Linda Dozier of Opelika, Alabama. Carolyn Landers rung the refrigerator (item #54584) for her and the range (item #47153) and dishwasher (item #16464) in my number. There were sales that I and other associates were aware of that were rung in our number but a majority of the times we were not aware that the sales transaction had been rung under our number. A majority of the time we found out a sale was rung in our number, by looking at our sales thru the local systems on the computer or if there was a problem to arise or if the customer called or came in the store and not by management and/or a sales associates
9. I personally know that Terry Gandy has used coupons on his personal transactions. I personally know this because at 1:02 p.m on March 6, 2004, I sold a big screen television to Terry Gandy that he was purchasing for his friend. The television was located on the sales floor. Terry and his friend were given 10% off for the television being a floor model and then I went into the drawer at register #003 located in the electronics department and pulled out several coupons that were applied to their sale. I personally heard the friend tell Terry he was going to pay on Terry's Sears card for the television and that he appreciated what he was doing for him. Terry's friend also talked to Beatrice Willis while he was in the store in the Electronics department because they knew each other thru a mutual friend.
10. I personally know that Terry Gandy purchased a dishwasher and cooktop for his parents.

I personally know because he had asked me to get him some item numbers of closeout or discontinued dishwashers and cooktops because his parents were moving to Phenix City, Alabama and they needed these items. I did give him several item numbers that he could use to purchase the appliances from.

11. I personally know that Byron Mason has approached associates about coupons and say "I know you got some coupons in the draw." I personally saw the associate pull the coupon out of the register and give the coupons to Byron Mason so that he could use them for himself and/or Sears customers. He has said similar remarks on several occasions. Byron was doing this because it was a common practice throughout the Auburn Store and probably thought just like the rest of us did that he was doing nothing wrong.
12. I personally know that On November 8, 2004, Terry Gandy and Nina Fitzwater called me to the office and asked me about using coupons. Terry Gandy asked me what was I supposed to do with coupons after they were used; I told him nothing as far as I knew of until a couple a days ago when Jackie Dodson (which was after Beatrice Willis was terminated) said they told her to start turning them in. He told me we were suppose to rip them up and turn them in at night. I told him no manager past or present had told me to destroy or turn them in at night. I told him that as long as I had been at Sears I had never destroyed or turned one in. He asked me why did I use the coupons more than once. I told him we have always used them more than once and management encouraged it. Coupons are located throughout the store and all associates used them more than once. Terry Gandy said every management operate differently and I said they should have told us to stop using them. I told him I was never verbally warned or written up about using coupons. I told him he was head of security and coupons lay around in plain eye sight he should have taken them up and said something to us. I told him he only said something to the black females about these coupons but Carolyn Lander and Stephanie Darby had used the same coupons and I think what they are doing now towards myself and Beatrice Willis was not fair. I told him the same coupons are still at the register today. I told him we were told to use coupons to close sales and now we are being terminated for something we were encouraged to do. Terry Gandy also said he heard about me saying I have 1st amendment rights and he told me I did not have 1st amendment rights in Sears and then he asked what did the 2nd amendment rights say? And I said What? He said that the 2nd amendment rights was the right to bear arms and that I couldn't bring weapons in Sears. I told him that was silly nobody in their right mind is going to bring a weapon to Sears or any other public place. I told him I had the right to discuss anything that has to do with me to anyone I chose and that I could even talk about him as long as I did not threaten him or make him feel threaten. I told him that he could not discuss things about me with anyone because of his management position. He still told me I could not. Based on Beatrice Willis being terminated about coupon abuse; I asked him was I going to be terminated and he told me he didn't know yet that I had to wait for Kenny Reese. I told him that he knew something because he would not speak and could not look at me. He told me he would not speak to me because he got tired of me bitching and I told him he has not heard me bitching and if he had it was because he was eavesdropping. At the end of the meeting I told Terry Gandy that Kenny Reese had messed with the delivery charges

and now the customers are being charged \$10.00 for each additional item and we were using coupons to correct this; Terry Gandy told me to keep using the coupons to correct the delivery problem. This left me totally confused and silently I asked myself - How can I use coupons for this if we are to destroy or turn them in at the end of each night? I started to ask him about it but decided against it because I felt it was pointless because as usual Terry Gandy was speaking out of both sides of his mouth.

13. I personally know that the handbook was never gone over with us on an annual basis. If had of been covered annually then management would have known they were not following the requirements of the handbook. I found out a majority of the information that was contained in our handbook after I was terminated. There were some years that I did not even have an annual review which management was required to complete annually.
14. When I started working at Sears, I started on a part-time basis because I worked another job driving the school bus. I worked an average of 20-30 hours per week. I was asked by several in management to go full-time and I repeatedly told them no and that I like working driving the school bus plus the insurance and benefits were great. My schedule stayed consistent on a regular basis except when Kenny Reese came and my schedule changed and then I was given one day per week on the schedule. I first went to David Williams, my immediate manager and asked him why did I only had one day on the schedule and David Williams told me that he did not do that to my schedule; then he told me that Kenny Reese was the one responsible for doing that to my schedule. I went to Kenny Reese and asked him why did he give me only one day on the schedule and he said, yes he did give me only one day on the schedule and that if I wanted more hours on the schedule I would have to go full-time. I felt like my hands were tied because I could not make a living with working my other job and only working one day a week at Sears because I have children and responsibilities. I did not feel grateful or look at this as a promotion because a promotion is something that you feel like is a benefit for you, not something forced upon you. I told him I would not be doing the store, Sears nor myself any good working full-time in electronics because my heart was not in electronics but I enjoyed vacuums, microwaves, sewing and appliances. He put me in appliances because I could not work in vacuums, microwaves and sewing full-time without working in electronics. If I would have had a choice I would have continued driving the school bus and working part-time at Sears. Before Kenny Reese came I felt that I was a very fortunate person because few people can say they had one job they enjoyed but I had two jobs that I truly enjoyed. I would go beyond the call of duty on either job because they were my enjoyment. I have worked from open to close, stayed late, came in early to make sure the floor was covered because I cared for the customers and the company. I was one of the people that if someone was doing something wrong, I would bring it to there attention and if they did not correct there actions I would inform management if I felt it was necessary. So there is no way I would have been doing anything that I felt was wrong. And if I myself was doing something wrong and it was brought to my attention, I corrected what I was doing and started doing it the correct way.

- 15 I always assisted in preventing shoplifting by associates and customers even though I was never given the \$25.00 gift card that is supposed to be given when you assist in preventing or catching someone for theft. I even brought this to Terry Gandy;s attention which only made him mad at me for questioning him about why Stephanie Darby (a white female) receive her \$25.00 gift card and I had assisted several times and never received anything.
- 16 I have always done my job whether it was dusting, bringing merchandise to the floor and various other duties. The only time I had a problem with doing something was on October 7, 2004, it had to do with the remodel work and that was when a white male associate who was getting paid to do remodel standing up doing absolutely nothing but talking to John Lawrie about something that had nothing to do with Sears. John Lawrie asked me, the only sales associate on the floor to take some boxes to the back that Sam had been using to hang range cords and dryer cords for the remodel. John Lawrie wanted me to do the work that Sam (a white male) was getting paid to do. I was not getting paid to do remodel work. My responsibility came in to action once they completed the work and my job was to keep the shelves supplied with merchandise. The blacks that were helping from beginning to the end with the remodel were hired thru a temporary agency. I personally was asked to help with remodel after the pay was dropped to \$6.00 an hour and I turned it down because I and other blacks was not asked to work remodel while they were paying the employees there benefit rate. Also during remodel Kenny Reese did take his two assistant managers to lunch but he only took white associates to lunch. He did not take black associates to lunch with him. The day Lisa and Danny (both African-American) were suppose to go to lunch, I personally saw Kenny Reese come to floor to go to lunch with the associates and when he saw Lisa and Danny were about to go he said he would be right back and never returned. He never went out to lunch with the remodel associates after that.
- 17 I challenge the statement made by Bryon Mason in #28 of his affidavit because Byron Mason was not around when Kenny Reese called me to his office just to make copies. So how could he have seen black and white associates. I have heard him call Beatrice Willis and Jackie Dotson to the back to make copies. I have never heard Kenny Reese call Stephanie Darby nor Carolyn Landers to the back to make copies.
18. Kenny Reese has approached Beatrice Willis, Jackie Dodson and myself to inquire about Carolyn Landers sales. One of his main concerns was Carolyn Landers as to how she was doing, what she was doing, her having a good schedule and that she was making sells. He never inquired about other associates to the degree that he did for Carolyn even the associates that were in training.
19. I challenge the statement made by Carolyn Landers in #11 of her affidavit because Beatrice Willis and I never had a discussion about coupons at all with Carolyn Landers needless to say about being upset with her about trying to discard a service coupon. I hardly ever carried on a conversation with her because of all the favoritism she was receiving from Kenny Reese and John Lawry (which he was doing because of Kenny

Reese).

20. I challenge Kenny Reese statement #9, because I personally told him about a situation with a customer not buying because of not wanting to purchase delivery. I told him this when Kenny Reese called several brand central associates to the side door of Sears that is facing K-mart. He told me to never let a customer walk for something like that and I told him that I was always told we could do nothing about delivery and he said to use coupons that we have to help solve the situation and if we don't have any to call a manager over but by any means do not let the customer walk. On another occasion after this meeting a customer came in regarding an air conditioner and wanted us to price match with Lowe's and normally I would have told the customer we could not price match because Lowe's does not sell Kenmore air conditioners. The price matching policy is that it has to be the same make and model, but after what Kenny said I called him and he came out and price matched an Kenmore air conditioner with an Lowe's air conditioner. I could not use a coupon because it was too much of a price difference which was over \$100.00.
21. I challenge Kenny Reese #36 statement because Kenny Reese never not one time called me to the back to go over my sales. Even when he forced me to go full-time he did not go over my sales. Previous store managers used to announce in our store wide morning meeting what the sales were for the store, departments and various associates. But Kenny Reese only told what the store were doing not individuals. The only individual item that was announced while Kenny Reese were store manager were credit applications.
22. I challenge Kenny Reese statement #19, Terry Gandy statement #13 where they both said Merle Miller had not completed any transactions with service coupons. He had not rung them under his associate number because he was on training at the time and he rung them in our numbers. After being terminated and reading the handbook, I have found out this procedure is not to be done but it is being done on a consistent basis. This is another example of corporate rules that are not being followed at the Auburn Store local level. I personally know that he rung transactions under my number and other associates number and he used coupons that were in the drawer.
23. I challenge Terry Gandy's statement #18 because I never told Terry Gandy to call me at my home. I didn't care to talk to him while at Sears so why would I want to talk to him at my home on my telephone. I never would have answered the phone that night except for the fact that I thought it was a new associate named Robert who I had stayed late to assist. On November 14, 2004, I had worked from 8:45 a.m till 5:30 p.m. that Sunday night. Terry Gandy called me at home 8:33 p.m. to tell me I was terminated; which no one said anything while I was there on Sears clock. I saw all of management that day before I left because it was Sears Friends and Family night. Terry Gandy did not say why I was being terminated he said that my services were no longer need at Sears. The reason was listed on my unemployment form.
24. I personally know that around January 11, 2005, Sears mailed documents to my home with customer information on it such as their credit card number, address and phone

numbers. If I was not entitled to this information (as Terry Gandy and Kenny Reese would like you to believe) while I was employed with Sears; then why was I entitled to this information two months after being terminated from Sears. I am sure these customers would not want me to have this information especially after not being employed by Sears any longer. Even if they wanted to supply me with certain information; they should have blacken out the credit card number, address and phone numbers. When I would call credit to look up a customer credit card number we were not suppose to even give them their credit card number. Credit central was suppose to send them out a new credit card if the customer did not have one.

25. I personally know that Michael Cunningham (a white male) had abused coupons and was not terminated for coupon abuse. I personally saw a transaction (which was before October 2004) that was given to Terry Gandy where Michael Cunningham had used between 5 to 8 coupons on one sales transaction and no adverse action was taken against him. I personally know that several associates had complained about Michael Cunningham's unethical selling practices and no adverse action was taken against him. Kenny Reese and Terry Gandy still would have not terminated Michael Cunningham had it not been for the District Loss Prevention Manager not Terry Gandy and Kenny Reese.
26. I personally know that on the evening that Beatrice Willis was terminated; I gave Byron Mason, Beatrice Willis's purse to take to the back for her. Byron Mason came back to the floor shocked about Beatrice Willis being terminated. I had my cell phone with me and Byron Mason talked to Shannon Bryant for a period of time and then talked to me about being afraid for his job and how we blacks had to stick together because Kenny Reese was out to get all of us. He even asked me to watch his back because he felt like Kenny Reese had Carolyn Landers watching him and he did not trust Kenny Reese nor Carolyn Landers. Byron felt that Carolyn Landers was Kenny Reese's spy in order to keep an eye on the black employees. I told Byron I would watch his back for him because I feared for my job and any other black employees job.
27. I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

July 21, 2006
Date

Denise L. Smith
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